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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.	
09/835,672 04/16/2001		Charles J. Rosenow	LF-20888	8206	
759	12/04/2003	EXAMINER			
Michael B. McMurry			CROW, STEPHEN R		
1210 Astor St.	er er		<u> </u>		
Chicago, IL 60	0610		ART UNIT	PAPER NUMBER	
			. 3764		
			DATE MAILED: 12/04/2003	Th	

Please find below and/or attached an Office communication concerning this application or proceeding.

Application No.   Applicantis  OPHICE Action Summary   Copyright   Copyright	. •								
Examiner   Steve R Crow   3764   37	Office Action Summary		Application No.		Applicant(s)				
Stave R Crow   3764			09/835,672		ROSENOW ET AL.				
The MAILING DATE of this communication appears on the cover sheef with the correspondence address — Period for Reply  A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE ② MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.  Extensions of a time may be windled used the provisions of 3 CRF 1.13(a). In one event, however, may a reply be timely filed  If the period for reply specified above is less than theiry (0) days, a reply with the statutory minimum of thirty (0)) days will be considered threely  If the period for reply specified above is less than theiry (0) days, a reply with the statutory minimum of thirty (0)) days will be considered threely  If the period for reply specified above is less than theiry (0) days, a reply with the statutory minimum of thirty (0)) days will be considered threely  If the period for reply specified above is less than theiry (0) days, a reply will be considered threely  If the period for reply specified above is less than theiry (0) days, a reply with the statutory minimum of theiry (0) days will be considered threely  If the period for reply specified above is less than theiry (0) days, and a reply will be considered threely  If the period for reply specified above is less than theiry (0) days, and a reply will be considered threely  If the period for reply specified above is less than theiry (0) days, and a reply will be considered threely  If the period for reply specified above is less than theiry (0) days, and a reply will be considered threely  If the period for reply specified to the communication of the specified above the specified above the specified above the specified to the specified above the specified ab			Examiner		Art Unit				
A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MALLING DATE OF THIS COMMUNICATION.  Extensions of time may be evaluable under the provisions of 37 CFR 1.75(a), in no event, however, may a reply be timely filled.  Extensions of time may be evaluable under the provisions of 37 CFR 1.75(a), in no event, however, may a reply be timely filled.  Extensions of time may be evaluable under the provisions of 37 CFR 1.75(a), in no event, however, may a reply be timely filled.  Extensions of the provision of the specified above, the machinum statutory pends vital gaply and vill expert SIX (50 MoNTHS from the mains date of this communication. Plant of the provision from the communication of the provision of the communication of the provision of the communication. Plant of the provision of the communication of the communication of the provision of the provision of Claims.  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213.  Disposition of Claims  4) Claim(s)23 is/are allowed.  5) Claim(s)123 is/are allowed.  5) Claim(s)123 is/are allowed.  6) Claim(s)123 is/are allowed.  6) Claim(s)123 is/are allowed.  7) Claim(s)12 and 4.23 is/are rejected.  7) Claim(s)12 and 4.23 is/are rejected.  7) Claim(s)13 is/are allowed.  8) Claim(s)14 and subjected to by the Examiner.  Application Papers  9) The specification is objected to by the Examiner.  Application Papers  11 proved, corrected drawings are required in reply to this Office action.  12) The proposed drawing correction filed on is/are: a) accepted or b) objected to by the Examiner.  If approved, corrected drawings are required in reply to this Office action.  12) The proposed drawing correction filed on is/are: a) approved b) disapproved by the Examiner.  Priority under 35 U.S.C. §§ 119 and 120  13) Acknowledgment is made of a claim for foreign priori						<u>\u.</u>			
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2a)  This action is FINAL. 2b)  This action is non-final.  3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213.  Disposition of Claims  4)  Claim(s) 1-23 is/are pending in the application.  4a) Of the above claim(s) 24-37 is/are withdrawn from consideration.  5)  Claim(s) 1,2 and 4-23 is/are allowed.  6)  Claim(s) 1,2 and 4-23 is/are rejected.  7)  Claim(s) 3 is/are objected to.  8)  Claim(s) 3 is/are objected to.  8)  Claim(s) 3 is/are objected to by the Examiner.  10  The grawing(s) filled on is/are: all accepted or bi objected to by the Examiner.  Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  11)  The proposed drawing correction filed on is: a) approved by disapproved by the Examiner.  12)  The oath or declaration is objected to by the Examiner.  Priority under 35 U.S.C. §§ 119 and 120  13)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  a)  All b)  Some * o)  None of:  1.  Certified copies of the priority documents have been received in Application No  3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  *See the attached detailed Office action for a list of the certified copies not received.  14)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 119(e) (to a provisional application).  a)  The translation of the foreign language provisional application has been received.  15)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 119(e) (to a provisional application).  a)  The translation of the foreign language provisional application has been received.  15)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application	THE - External after aft	MAILING DATE OF THIS COMMUNICATION.  nsions of time may be available under the provisions of 37 CFR 1.13 SIX (6) MONTHS from the mailing date of this communication.  period for reply specified above is less than thirty (30) days, a reply period for reply is specified above, the maximum statutory period ware to reply within the set or extended period for reply will, by statute, reply received by the Office later than three months after the mailing	36(a). In no event, howe within the statutory min vill apply and will expire so cause the application to	ver, may a reply be tim imum of thirty (30) days SIX (6) MONTHS from to become ABANDONED	ely filed  will be considered timely the mailing date of this co  (35 U.S.C. § 133).	•			
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### Election/Restrictions

1. Applicant's election without traverse of the restriction requirement in Paper No. 9 is acknowledged.

## Claim Objections

1.

2.

Claim 5 is objected to because of the following informalities: Claim 5 depends upon itself. Appropriate correction is required.

# Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

- (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
- 4. Claims 1,2,4,10, 12,17-18,20,22 are rejected under 35 U.S.C. 102(b) as being anticipated by Stearns et al.

Stearns et al (118) discloses an elliptical exercise device having pedal levers 450, pedals 455, reciprocating guides 460, adjustable crank s 420, adjustable assembly 430-480, wherein the first link 430 acts to move the pedal lever, and

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the stride adjustment mechanism moves the first link portion 440 via actuator 498.

Note the input system/control system 406-408.

As to claim10, note that inherently the user changes the stride as a function of the desired stride length inputted, and this can broadly be considered as an exercise program.

### Claim Rejections - 35 USC § 103

- 5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:
  - (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.
- 6. Claims 5-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stearns et al in view of Whan-Tong et al (313).

Whan-Tong et al discloses an elliptical exercise device having a control system 184 wherein a desired workout may be maintained by inputting various parameters such as age, height, sex, heart rate, speed,etc. The control system will adjust the braking system 40 and/or lift mechanism 38 to achieve the desired workout level. See column 9 lines 63+.

Given this teaching, it would have been obvious to one skilled in the art to provide the Stearns et al control system with means for inputting additional parameters and to utilize a CPU control which will change the stride length adjustment (lift mechanism) as a function of the desired speed.

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As to claims 14 16 and 21, the inputting of a user's weight is generally well recognized in the aerobic exercise equipment art and would have been well within the purview of one skilled in the art.

### Allowable Subject Matter

7. Claim 3 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### **Conclusion**

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steve R Crow whose telephone number is 703-308-3398. The examiner can normally be reached on Reg:8:30-6;Off First Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nicholas Lucchesi can be reached on 703-308-2698. The fax phone numbers for the organization where this application or proceeding is assigned are 703-306-4520 for regular communications and 703-306-4520 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0873.

STEPHEN R. CROW PRIMARY EXAMINER ART UNIT 332